

AM0628  
LB 439  
DCC-02-28

AM0628  
LB 439  
DCC-02-28

AMENDMENTS TO LB 439

- 1           1. Strike the original sections and insert:
- 2           "Section 1. Section 75-902, Reissue Revised Statutes of
- 3 Nebraska, is amended to read:
- 4           75-902. For purposes of the Grain Dealer Act, unless the
- 5 context otherwise requires:
- 6           (1) Commission means the Public Service Commission;
- 7           (2) Direct delivery grain has the same meaning as in
- 8 section 88-526;
- 9           (3) Direct delivery obligation has the same meaning as in
- 10 section 88-526;
- 11           (4) Grain includes, but is not limited to, all
- 12 unprocessed beans, whole corn, milo and other sorghum, wheat, rye,
- 13 barley, oats, millet, safflower seed and processed plant pellets,
- 14 alfalfa pellets, and any other bulk pelleted agricultural storable
- 15 commodity, except grain which has been processed or packaged for
- 16 distribution as seed;
- 17           ~~(3)~~ (5) Grain dealer means any person, partnership,
- 18 limited liability company, corporation, or association, ~~other than~~
- 19 ~~a custom feeder of livestock or poultry or a grain warehouse~~
- 20 ~~licensed under the Grain Warehouse Act or located in Nebraska and~~
- 21 ~~licensed under the United States Warehouse Act that does not buy,~~
- 22 ~~sell, or transport grain other than grain that is received at its~~
- 23 ~~licensed warehouse facilities, who that~~ (a) buys grain from ~~its the~~
- 24 owner or producer of the grain within this state for purposes of

AM0628  
LB 439  
DCC-02-28

AM0628  
LB 439  
DCC-02-28

1 selling such grain, (b) transports grain into this state for  
2 purposes of selling such grain, or (c) acts as an employee or agent  
3 of a buyer or seller for purposes of collective bargaining in the  
4 marketing of grain. Grain dealer does not include (i) a custom  
5 feeder of livestock or poultry or (ii) a warehouse licensee under  
6 the Grain Warehouse Act or a warehouse licensee under the United  
7 States Warehouse Act of a warehouse located in Nebraska if the  
8 warehouse licensee does not buy, sell, or transport grain other  
9 than grain that is received at its licensed warehouse facilities;

10 (6) In-store transfer has the same meaning as in section  
11 88-526; and

12 ~~(4)~~ (7) Post-direct delivery storage position has the  
13 same meaning as in section 88-526; and

14 (8) Producer means the owner, tenant, or operator of land  
15 in this state who has an interest in and receives all or part of  
16 the proceeds from the sale of grain produced on that land.

17 Sec. 2. Section 75-903, Reissue Revised Statutes of  
18 Nebraska, is amended to read:

19 75-903. All grain dealers doing business in this state  
20 shall be licensed by the commission. If the applicant is an  
21 individual, the application shall include the applicant's social  
22 security number. To procure and maintain a license, each grain  
23 dealer shall:

24 (1) Pay an annual fee of sixty dollars which shall be due  
25 on or before the date established by the commission for each  
26 license and a registration fee not to exceed forty dollars per year  
27 for each vehicle used by such licensee to transport grain. Such

AM0628  
LB 439  
DCC-02-28

AM0628  
LB 439  
DCC-02-28

1 fees shall be paid to the State Treasurer and credited to the  
2 General Fund;

3 (2) Equip each vehicle used by the licensee for grain  
4 transportation with a commercial license plate registered with the  
5 Department of Motor Vehicles, except that a licensee who resides in  
6 another state shall license such vehicles according to the laws of  
7 his or her state of residence;

8 (3) Affix a grain dealer plate issued by the commission  
9 to each vehicle used by the licensee;

10 (4) File security which may be a bond issued by a  
11 corporate surety company and payable to the commission, an  
12 irrevocable letter of credit, or a certificate of deposit, subject  
13 to the approval of the commission, for the benefit of any producer  
14 or owner within this state who files a valid claim arising from a  
15 sale to or purchase from a grain dealer. The security shall be in  
16 the amount of thirty-five thousand dollars or seven percent of  
17 grain purchases or exchanges by the grain dealer in the preceding  
18 license year, whichever is greater, not to exceed three hundred  
19 thousand dollars. Amounts used in the calculation of the security  
20 shall include all direct delivery grain purchases and exchanges  
21 valued on the date delivery is made. Amounts used in the  
22 calculation of the security shall not include any transactions in  
23 which direct delivery grain is exchanged for a post-direct delivery  
24 storage position and the post-direct delivery storage position is  
25 created by an in-store transfer on the same date as the delivery of  
26 the direct delivery grain. Such security shall be furnished on the  
27 condition that the licensee will pay for any grain purchased upon

AM0628  
LB 439  
DCC-02-28

AM0628  
LB 439  
DCC-02-28

1 demand, not later than thirty days after the date of the last  
2 shipment of any contract. The liability of the surety shall cover  
3 purchases and sales made or arranged by the grain dealer during the  
4 time the bond is in force. A grain dealer's bond filed with the  
5 commission shall be in continuous force and effect until canceled  
6 by the surety. The liability of the surety on any bond required by  
7 this section shall not accumulate for each successive license  
8 period during which the bond is in force; and

9 (5) File a reviewed or audited fiscal year-end financial  
10 statement prepared by a person or firm which holds a permit granted  
11 by the Nebraska State Board of Public Accountancy. If licensing as  
12 an individual, the financial statement shall be prepared in  
13 accordance with Other Comprehensive Basis of Accountancy, as filed  
14 with the board, for a personal financial statement, using  
15 historical cost and accrual basis of accounting. If licensing as a  
16 partnership, corporation, or limited liability company, the  
17 financial statement shall be prepared in conformity with accounting  
18 principles generally accepted in the United States. The financial  
19 statement shall include: (a) A statement of income showing profit  
20 or loss; (b) a balance sheet; (c) a statement of cash flow; (d) a  
21 statement of proprietor's capital or retained earnings; (e) the  
22 volume and dollar value of the grain purchases the licensee made in  
23 Nebraska during the fiscal year; (f) the volume and dollar value of  
24 transactions in which direct delivery grain is exchanged for a  
25 post-direct delivery storage position and the post-direct delivery  
26 storage position is not created by an in-store transfer on the same  
27 date as the delivery of the direct delivery grain; and ~~(f)~~ (g) the

AM0628  
LB 439  
DCC-02-28

AM0628  
LB 439  
DCC-02-28

1 accountant's certification, assurances, opinions, and comments and  
2 the notes with respect to the financial statement. If the volume  
3 and dollar value of the grain purchases is not reported, the grain  
4 dealer shall file the maximum grain dealer security as required by  
5 the Grain Dealer Act.

6           If an applicant for a grain dealer license is a wholly  
7 owned subsidiary of a parent company and such a financial statement  
8 is not prepared for the subsidiary, the parent company shall submit  
9 its reviewed or audited fiscal year-end financial statement and  
10 shall execute an unconditional guarantee agreement as prescribed by  
11 the commission.

12           Sec. 3. Section 75-905, Reissue Revised Statutes of  
13 Nebraska, is amended to read:

14           75-905. (1) Except as provided in subsection (2) of this  
15 section, no seller shall have recourse to the grain dealer's  
16 security unless the seller:

17           (a) Demands that payment from the grain dealer be made  
18 within thirty days after the date the grain dealer takes possession  
19 of the seller's grain;

20           (b) Negotiates any negotiable instrument issued as  
21 payment for grain by the grain dealer within thirty days after its  
22 issuance; and

23           (c) Notifies the commission within thirty days after any  
24 apparent loss to be covered under the terms of the grain dealer's  
25 security.

26           (2) When grain is delivered to a grain dealer in multiple  
27 shipments comprising one contract, the seller shall not have

AM0628  
LB 439  
DCC-02-28

AM0628  
LB 439  
DCC-02-28

1 recourse to the grain dealer's security unless the seller notifies  
2 the commission within thirty days after the date of the last  
3 shipment of any apparent loss to be covered under the terms of the  
4 grain dealer's security.

5 (3) The grain dealer security shall provide security for  
6 direct delivery grain until any post-direct delivery storage  
7 position is created for a period not to exceed thirty days after  
8 the date of the last shipment of the contract.

9 Sec. 4. Section 88-526, Revised Statutes Supplement,  
10 2004, is amended to read:

11 88-526. As used in the Grain Warehouse Act, unless the  
12 context otherwise requires:

13 (1) Commission ~~shall mean~~ means the Public Service  
14 Commission;

15 (2) Direct delivery grain means all grain that is bought,  
16 sold, or transported in the name of a warehouse licensee, other  
17 than grain that is received at the licensed warehouse facilities;

18 (3) Direct delivery obligation means the obligation of a  
19 warehouse licensee or grain dealer to transfer title to  
20 warehouse-owned grain to a producer by an in-store transfer upon  
21 the delivery of direct delivery grain. A direct delivery  
22 obligation is treated as a grain dealer obligation until such time  
23 as it is satisfied by an in-store transfer;

24 (4) Grain ~~shall mean~~ means wheat, corn, oats, soybeans,  
25 barley, rye, flax, or sorghum which has not been processed or  
26 packaged for the purpose of distribution as seed, including, but  
27 not limited to, edible beans, whole corn plant pellets, alfalfa

AM0628  
LB 439  
DCC-02-28

AM0628  
LB 439  
DCC-02-28

1 pellets, millet, sunflower seed, safflower seed, and any other bulk  
2 pelleted agricultural storable commodity;

3 (5) Grain dealer has the same meaning as in section  
4 75-902;

5 ~~(3)~~ (6) Grain in storage ~~shall mean~~ means any grain which  
6 has been received at any warehouse and to which title has not been  
7 transferred to the warehouseman by signed contract or priced scale  
8 ticket;

9 (7) In-store transfer means a method by which a warehouse  
10 licensee transfers title to warehouse-owned grain to any person in  
11 satisfaction of a direct delivery obligation between the warehouse  
12 licensee or grain dealer and the producer, and the grain remains in  
13 the warehouse;

14 (8) Post-direct delivery storage position means a storage  
15 position acquired through an in-store transfer in satisfaction of a  
16 direct delivery obligation;

17 ~~(4)~~ (9) Warehouse ~~shall mean~~ means any grain elevator,  
18 mill, grist mill, building, or receptacle in which grain is held in  
19 storage for more than ten consecutive days;

20 ~~(5)~~ (10) Warehouse licensee ~~shall mean~~ means any  
21 warehouseman who is licensed pursuant to the Grain Warehouse Act;  
22 and

23 ~~(6)~~ (11) Warehouseman ~~shall mean~~ means any person,  
24 partnership, limited liability company, corporation, or association  
25 who (a) receives grain for storage or stores or offers to store  
26 grain for legal consideration for another person, partnership,  
27 limited liability company, corporation, or association in a

AM0628  
LB 439  
DCC-02-28

AM0628  
LB 439  
DCC-02-28

1 warehouse where delivered or (b) receives grain for shipment to  
2 other points for storage, consignment, or resale either in or out  
3 of this state.

4 Sec. 5. Section 88-528, Revised Statutes Supplement,  
5 2004, is amended to read:

6 88-528. Each applicant for a license and each warehouse  
7 licensee shall annually file an application with the commission and  
8 shall submit to a criminal background check as set forth in section  
9 88-528.01. The application shall be in the form prescribed by the  
10 commission to do business under the Grain Warehouse Act and shall  
11 include an audited or reviewed fiscal year-end financial statement  
12 prepared in accordance with generally accepted accounting practices  
13 in the United States by a person or firm which holds a permit  
14 granted by the Nebraska State Board of Public Accountancy. If the  
15 applicant files a reviewed fiscal year-end financial statement, the  
16 applicant shall also provide additional security pursuant to  
17 section 88-530 in such amount as the commission requires. If  
18 licensing as an individual, the financial statement shall be  
19 prepared in accordance with Other Comprehensive Basis of  
20 Accountancy, as filed with the board, for a personal financial  
21 statement, using historical cost and accrual basis of accounting.  
22 The financial statement shall include: (1) A balance sheet; (2) a  
23 statement of income showing profit or loss; (3) a statement of  
24 retained earnings; (4) a statement of changes in the financial  
25 position; and (5) the accountant's certifications, assurances,  
26 opinions, comments, and notes with regard to such financial  
27 statement. An applicant may also submit a valuation of assets by



AM0628  
LB 439  
DCC-02-28

AM0628  
LB 439  
DCC-02-28

1 competent appraisal acceptable to the commission for inclusion in  
2 computing net worth for the purpose of meeting any net worth  
3 requirements imposed by the act or rules and regulations of the  
4 commission. If a valuation of assets is submitted, no more than  
5 seventy percent of appraised value shall be used in determining  
6 compliance with net worth requirements. Such application shall set  
7 forth the location of the warehouse to be used by the applicant,  
8 its relation to railroad trackage, its capacity, its general plan  
9 and equipment, and its ownership.

10           If an applicant for a license is a wholly owned  
11 subsidiary of a parent company and such a financial statement is  
12 not prepared for the subsidiary, the parent company shall submit  
13 its audited fiscal year-end financial statement and shall execute  
14 an unconditional guarantee agreement as prescribed by the  
15 commission. A parent company may also submit a valuation of assets  
16 on behalf of an applicant that is a wholly owned subsidiary of the  
17 parent company.

18           Sec. 6.     Section 88-543, Reissue Revised Statutes of  
19 Nebraska, is amended to read:

20           88-543. (1) No warehouse licensee ~~or partner, limited~~  
21 ~~liability company member, officer,~~ or agent thereof shall: issue

22           (a) Issue a receipt for grain not actually received. If  
23 at any time there is less grain in a warehouse than outstanding  
24 receipts issued for grain, there shall be a presumption that the  
25 warehouse licensee or partner, limited liability company member,  
26 officer, or agent thereof has wrongfully removed grain, has  
27 wrongfully caused grain to be removed, or has issued receipts for

AM0628  
LB 439  
DCC-02-28

AM0628  
LB 439  
DCC-02-28

1 grain not actually received, and has violated this section;

2 (b) Create a post-direct delivery storage position  
3 without issuing proper documentation consistent with rules and  
4 regulations adopted and promulgated by the commission;

5 (c) Create a post-direct delivery storage position at any  
6 time the warehouse licensee does not have sufficient  
7 warehouse-owned grain or grain in open storage to cover the storage  
8 position created for the benefit of the producer; or

9 (d) Record grain as being received or loaded out that has  
10 not been physically deposited in or physically removed from the  
11 warehouse.

12 (2) Any warehouse licensee ~~or partner, limited liability~~  
13 ~~company member, officer,~~ or agent thereof who knowingly and  
14 willingly violates this section shall be guilty of a Class IV  
15 felony.

16 Sec. 7. Original sections 75-902, 75-903, 75-905, and  
17 88-543, Reissue Revised Statutes of Nebraska, and sections 88-526  
18 and 88-528, Revised Statutes Supplement, 2004, are repealed.

19 Sec. 8. Since an emergency exists, this act takes effect  
20 when passed and approved according to law.".